

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO. 242 OF 2020.

IN THE MATTER OF:

An Application under Section 245 of the
Companies Act 1994 read with Section 241(v) of
the Companies Act 1994 for winding up of HG
AVIATION LTD.

IN THE MATTER OF:

Wilmington Trust Company

---- Petitioner.

-Versus-

HG AVIATION LTD. Regent Airways and others,
---- Respondents.

Mr. Md. Mucktadir Rahman, Advocate

---- For the Petitioner.

None appears

---- For the Respondents.

Judgment Delivered on 19th August, 2026.

Md. Toufiq Inam, J:

1. This is an application under section 245 of the Companies Act, 1994 read with section 241(v) thereof, seeking an order for winding up of HG Aviation Ltd., the respondent No.1 company.
2. The petitioner, Wilmington Trust Company, not in its individual capacity but solely as owner trustee (hereinafter referred to as “the petitioner”), is a company duly incorporated and existing under the laws of the United States of America, having its registered office at

1100 North Market Street, Wilmington, Delaware 19890-1605, United States of America. The petitioner is engaged, inter alia, in providing corporate and institutional services, investment management and private banking facilities, including services connected with institutions engaged in aviation-related businesses and aircraft leasing.

3. The respondent No.1, HG Aviation Ltd., operating as Regent Airways (hereinafter referred to as “the respondent company”), is a company incorporated in Bangladesh under the Companies Act, 1994, having its registered office at Level-7, SIAAM Tower, Plot No.15, Dhaka-Mymensingh Road, Sector-3, Uttara Model Town, Dhaka-1230. Its authorised share capital is BDT 5,000,000,000 divided into 500,000,000 ordinary shares of Tk.10 each, while its paid-up share capital is stated to be BDT 2,266,600,000. One of its principal objects is to carry on the business of air transport services, including carriage of passengers and cargo.
4. It appears from the record that the respondent company entered into an Aircraft Lease Agreement dated 14 December 2012 with the petitioner in respect of a used Boeing B737-700 aircraft bearing Manufacturer’s Serial No. 30714. The said agreement was accepted and executed on behalf of the respondent company by its Chief Executive Officer, Mr. Imran Asif.
5. According to the petitioner, substantial sums became due and payable by the respondent company under the said Aircraft Lease Agreement. The petitioner has stated that, as of 25 February 2020, an amount of USD 3,709,827.38 remained outstanding, apart from applicable interest and other contractual dues. The petitioner

further claims interest on the overdue amount in accordance with the contractual terms.

6. It further appears that, despite repeated demands, the respondent company failed to discharge the outstanding liability. The petitioner caused legal and demand notices to be issued on 28 January, 3 February and 18 February 2020, claiming, inter alia, the outstanding amount of USD 1,668,136.69 then asserted to be payable under the Aircraft Lease Agreement.
7. Significantly, the respondent company, through its learned lawyers, replied to the demand notice. In the said reply, instead of denying the underlying liability, the respondent acknowledged the claim and undertook to make payment within the shortest possible time. Such acknowledgment assumes considerable significance in determining whether the petitioner has established the existence of a debt which is due and payable.
8. The record further discloses that, by way of a subsequent arrangement, including Side Letter No.03 and a deed dated 19.12.2019 relating to the Aircraft Lease Agreement, the respondent company and its guarantors agreed upon a structured mechanism for payment of the outstanding obligations. The agreed payment schedule contemplated payment of US\$400,000 on 19.12.2019, a further US\$400,000 on 27.12.2019, US\$1,100,000 on 15.01.2020, and payment of the balance on 15.02.2020. It was further agreed that amounts falling due after 15.2.2020 would be paid on demand.
9. The relevant provisions of the said arrangement further demonstrate that the parties treated the unpaid amounts as existing

and enforceable obligations. The deed expressly contemplated payment of the Buy-Out Fee, Unpaid Obligations and other amounts which had become due and payable, including rent, reserves, default interest and other contractual amounts. It also confirmed that the relevant guarantees remained in full force and that the obligations of the lessee constituted guaranteed obligations.

10.Despite the aforesaid arrangement and the agreed instalment schedule, the respondent company failed and neglected to make the stipulated payments. The petitioner consequently invoked the jurisdiction of this Court seeking winding up of the respondent company.

11.At an earlier stage of the proceeding, the respondent company challenged the maintainability of the winding-up application, principally contending that the parties had selected the law of England as the governing law under Article 27.1 of the original Aircraft Lease Agreement dated 14.12.2012 and, therefore, according to the respondent, the present proceeding in Bangladesh was not maintainable. The said objection was heard and rejected by this Court. The respondent thereafter approached the Appellate Division by filing Civil Petition for Leave to Appeal No.1323 of 2023, but was unsuccessful.

12.In the circumstances, the question of maintainability on the ground of the contractual choice of English law no longer remains open for reconsideration in the present proceeding. The issue having already been adjudicated by this Court and the decision having been maintained by the Appellate Division, the same cannot be reagitated at this stage.

13.Mr. Md. Muktadir Rahman, learned Advocate appearing for the petitioner, submits that the respondent company has repeatedly acknowledged its liability but has failed to honour its commitments. He submits that the demand notices, the replies thereto, the subsequent payment arrangement and the affidavit-in-opposition all demonstrate that the debt is not only due but has substantially been admitted by the respondent company. Learned Advocate further submits that the respondent company is unable to pay its debts and that the circumstances therefore justify an order of winding up under the Companies Act, 1994. In support of his submission, he has referred to the decision reported in 248 DLR 412.

14.During the substantive hearing, the respondent company did not effectively contest the petitioner's case. The matter was placed in the list for judgment on 17.08.2026, when Mr. Saqeb Mahbub, learned Advocate, appeared on behalf of the respondent No.1 and sought an adjournment to obtain instructions from his client. The matter was accordingly deferred. On the subsequent date, however, none appeared on behalf of the respondent company.

15.However,this Court considers it appropriate to examine the matter on its merits and, in that regard, finds it necessary to take into consideration the affidavit-in-opposition filed by the respondent-company. Significantly, the respondent has not denied the existence of substantial outstanding liabilities. Rather, it has categorically stated that, apart from its liability towards the petitioner, it has total outstanding liabilities amounting to BDT 8,703,238,452.00 to its other creditors. The respondent has further contended that, for an effective and comprehensive adjudication of

the winding-up proceeding, all such creditors ought to be impleaded as parties.

16. The respondent company has attempted to resist the winding-up application principally on the ground that it remains in operation and is negotiating with potential investors for fresh capital. According to the respondent, once such investment is secured, the company will become operational and will be in a position to discharge its outstanding liabilities. It has also reiterated its earlier objection regarding the governing law of the Aircraft Lease Agreement.

17. This court has considered the submissions of the learned Advocate for the petitioner, the affidavit-in-opposition, the documents produced before us and the materials available on record.

18. The first question that falls for consideration is whether the petitioner has established the existence of a debt which is presently due and payable by the respondent company.

19. On consideration of the materials, we find that the answer is in the affirmative. The contractual relationship between the parties is not in dispute. The Aircraft Lease Agreement dated 14 December 2012 was admittedly entered into between the parties. More importantly, the respondent company, in response to the petitioner's demand, did not dispute the underlying liability but acknowledged the claim and undertook to make payment. Thereafter, the parties entered into a further arrangement by which the respondent company expressly agreed to discharge its outstanding obligations through specified instalments.

20. An acknowledgment of liability followed by an agreed payment schedule is a significant circumstance. It demonstrates that the dispute is not genuinely one as to the existence of the debt. The subsequent failure to honour the agreed payment schedule strengthens the petitioner's case that the debt has remained unpaid notwithstanding repeated opportunities afforded to the respondent company.

21. The respondent company has not produced any convincing material showing that the admitted liability has subsequently been discharged, substantially reduced, extinguished or otherwise ceased to be payable. On the contrary, its own affidavit-in-opposition acknowledges that it is burdened with liabilities amounting to more than BDT 870 crore.

22. The second question is whether, in the circumstances of the case, the respondent company should be regarded as unable to pay its debts so as to justify an order of winding up. In considering this question, the Court is not required to proceed merely upon the basis of the respondent's assertion that it may, at some future point, receive investment and thereby become capable of paying its creditors. A company cannot ordinarily resist a winding-up proceeding in respect of an established and presently payable debt merely by expressing an expectation of future investment, unless the surrounding circumstances demonstrate a real and credible ability to meet its existing liabilities.

23. In the present case, the respondent company's own pleading discloses a substantial accumulation of liabilities. It admits outstanding liabilities of BDT 8,703,238,452.00 in addition to the petitioner's claim. It has also failed to honour the payment

arrangement which it itself agreed upon. These circumstances, taken together, provide cogent evidence of its present inability to discharge its debts in the ordinary course of business.

24. The mere fact that the respondent company states that it is negotiating with potential investors cannot, by itself, defeat a creditor's statutory remedy. A winding-up proceeding is concerned with the company's existing financial position and its ability to meet its presently enforceable obligations. A speculative possibility of future capital injection, unsupported by any concrete evidence of a concluded investment or immediately available funds, cannot be treated as an adequate answer to an established debt.

25. This court is also unable to accept the contention that the petitioner should be denied relief merely because the respondent company has other creditors. The existence of other creditors does not extinguish or suspend the statutory right of a creditor to seek winding up where the requirements of the law are otherwise satisfied. At the same time, the admitted existence of numerous creditors is a circumstance which reinforces rather than weakens the necessity for an orderly winding-up process, so that the assets and liabilities of the company may be dealt with in accordance with law and the interests of all creditors may be protected.

26. As regards the respondent's objection founded upon the contractual choice of English law, the matter has already been adjudicated in the earlier stage of this proceeding and the decision of this Court has been maintained by the Appellate Division. The said issue has therefore attained finality and cannot now be reopened.

27. This court further notes that the respondent company's conduct after acknowledging the liability is material. The company was afforded time and opportunity to comply with its own payment undertaking. Nevertheless, despite repeated demands and the agreed schedule, it failed to discharge the outstanding obligation. The subsequent assertion that it may become capable of paying upon obtaining future investment does not satisfactorily explain the existing default.

28. In exercising its winding-up jurisdiction, the Court must have due regard to the interests of the company as well as those of its creditors. Winding up is undoubtedly a serious remedy and ought not to be ordered where a debt is disputed on substantial and bona fide grounds or the company is experiencing a temporary commercial or financial difficulty. The position, however, is materially different where the debt is established and admitted by the company, remains unpaid, and the company has failed to honour an agreed arrangement/ schedule for its payment. In the present case, the respondent-company has not only acknowledged its liability towards the petitioner but has also entered into an arrangement for payment of the outstanding dues, which it subsequently failed to honour. Its own pleadings further disclose substantial outstanding liabilities to other creditors. In these circumstances, the mere assertion of a possibility of future investment or an improvement in the company's financial position, without any concrete evidence demonstrating a present or reasonably certain ability to discharge its existing liabilities, cannot by itself constitute sufficient ground for withholding the winding-up order.

29. The materials before us, therefore, establish a consistent and uninterrupted chain of circumstances: the respondent company incurred contractual liabilities; those liabilities were acknowledged; a further payment arrangement was entered into; the agreed instalments were not paid; repeated demands were made; and the respondent company has itself admitted that it owes substantial sums to creditors generally.

30. This court is, accordingly, satisfied that the petitioner has succeeded in establishing a clear case of an outstanding and admitted debt and that the respondent company has failed to demonstrate a present and credible capacity to discharge its debts. The circumstances disclosed on record justify the exercise of the jurisdiction of this Court under sections 241(v) and 245 of the Companies Act, 1994.

31. This court has also considered whether any sufficient ground has been shown for withholding the winding-up order on the basis of the respondent company's assertion that it is negotiating with potential investors. In our view, such a general and uncertain assertion, without any demonstrated or secured source of funds capable of satisfying the existing liabilities, cannot outweigh the established rights of the petitioner as a creditor. The respondent company's admitted overall indebtedness further makes it necessary that its affairs be brought under the supervision of the winding-up process rather than allowing its creditors to remain exposed to an indefinite prospect of payment.

32. In view of the foregoing discussion, and upon consideration of the pleadings, documents and circumstances of the case, we are of the considered view that the petitioner has made out a case for winding

up of the respondent company. The application, therefore, deserves to be allowed.

33. Accordingly, **the application is allowed.**

34.HG Aviation Ltd., the respondent No.1 company, is hereby ordered to be wound up under the provisions of the Companies Act, 1994. For the purpose of carrying out the winding-up proceedings in accordance with law, **Mr. Asif Bin Anwar**, Barrister-at-Law, Advocate, Supreme Court of Bangladesh, Flat 4A, Level 3, House No. 39A, (Kanak Bindu), Road 8, Dhanmondi, Dhaka-1205, Cell: +8801841010059, Ph: +88 02223311208, Mo: +880 1731506691, E-mail: asif.b.anwar@gmail.com, asifbinanwar@avonchambers .com, Bangladesh, is hereby appointed as the Official Liquidator of the respondent company.

35.The Official Liquidator shall forthwith enter upon his duties and shall take all necessary steps in accordance with law for the purpose of taking into his custody and control the assets, properties, books, accounts, records and documents of the respondent company and for conducting and completing the liquidation of its affairs under the supervision of this Court.

36.The Official Liquidator shall, within 2 (two) months from the date of receipt of this order, submit a comprehensive report before this Court indicating, so far as ascertainable:

- (a) the assets and liabilities of the respondent company;
- (b) the movable and immovable properties, if any, standing in the name of or belonging to the respondent company;

- (c) the claims of the creditors, employees, contributories and other persons, if any;
- (d) the books, accounts, records and documents obtained by him and the steps taken by him in the course of the liquidation;
- (e) the amount, if any, realised from the assets of the company and the expenses incurred in the liquidation proceedings;
- (f) whether any further steps are required for identification, preservation or realisation of the assets or for ascertainment and discharge of the liabilities of the company; and
- (g) such other matters as may be necessary for effective completion of the winding-up proceedings, including whether the affairs of the company have substantially been wound up and whether any further order of this Court is necessary before dissolution of the company may be considered.

37. The directors, shareholders, officers, employees, bankers, auditors, accountants, agents and representatives of the respondent company, and all other persons having possession, custody or control of any books, records, documents, accounts, monies, securities, assets or properties belonging to or relating to the respondent company, are hereby directed to render full cooperation and assistance to the Official Liquidator and to deliver forthwith, or within such time as may be specified by him, all such books, records, documents, accounts, assets and properties in their possession, custody or control.

38.The aforesaid persons shall further furnish to the Official Liquidator such information, statements, explanations and particulars concerning the affairs, assets, liabilities, transactions and business of the respondent company as may reasonably be required by him for the purpose of carrying out the liquidation. They shall not obstruct, impede or otherwise interfere with the discharge of his duties.

39.The learned Advocate for the petitioner shall, within 1 (one) week from the date of receipt of this order, provide to the Official Liquidator certified copies of the Memorandum and Articles of Association, certificate of incorporation and other incorporation documents, annual returns, financial statements, particulars of directors and shareholders, and such other documents relating to the affairs of the respondent company as are available to the petitioner.

40.The Official Liquidator shall open and maintain a separate liquidation bank account with Sonali Bank PLC, Supreme Court Branch, Dhaka, for depositing monies realised from the assets of the company and for meeting the expenses properly incurred in connection with the liquidation proceedings, subject to law and further orders of this Court.

41.The petitioner shall deposit a sum of Tk.1,00,000/- (Taka one lac) towards the initial expenses of the liquidation proceedings within 7 (seven) days from the date of receipt of this order.

42.The initial remuneration of the Official Liquidator is hereby fixed at Tk.3,00,000/- (Taka three lac), subject to further orders of this

Court and any adjustment that may become necessary having regard to the progress and requirements of the liquidation proceedings. The said remuneration shall initially be borne and paid by the petitioner, without prejudice to its adjustment or treatment in accordance with law and further orders of this Court.

43. The Official Liquidator shall maintain proper accounts of all monies received and all expenses incurred in connection with the winding-up proceedings and shall place the relevant statement of accounts before this Court along with his report or as and when directed.

44. The Official Liquidator shall, in the meantime, take all necessary steps for the preservation and protection of the assets and records of the respondent company and shall ensure that no asset or property of the company is disposed of, removed, concealed or otherwise dealt with contrary to law. Any matter requiring immediate intervention or further direction of this Court shall be brought to its notice without delay.

45. Upon submission of the report by the Official Liquidator, appropriate further orders shall be passed regarding identification and realisation of assets, verification and settlement of claims and liabilities, payment of liquidation expenses, distribution of any surplus assets among the contributories, if any, and, where appropriate, dissolution of the company in accordance with law.

46. The Official Liquidator shall enter upon his duties immediately upon receipt of this order and shall proceed with the winding-up in

accordance with law and subject to the supervision and further orders of this Court.

47. Let a copy of this judgment and order be communicated forthwith to the Registrar of Joint Stock Companies and Firms and to the Official Liquidator for information and necessary action.

(Justice Md. Toufiq Inam)

Ashraf/ABO.